

REMARKS/ARGUMENTS

In the Office Action, the Examiner allowed claims 32-40 and 94-96; rejected claims 1-6, 15-22, 25-31, 41, 42, 46-50, 53-65, 72-80, and 85-93 under 35 U.S.C. 103(a) as being unpatentable over Leano et al. (US Pat. 6,453,472) in view of Chapman (US Pat. 6,438,123); and rejected claims 7-14, 21, 23, 24, 29, 43-45, 51, 52, 66-71, and 81-84 under 35 U.S.C. 103(a) as being unpatentable over Leano et al. in view of Chapman further in view of Dail et al. (US Pat. 5,953,344). Claims 1-96 remain pending in this application.

Application of 35 USC 103(c)

The Examiner cited Leano et al. and Chapman as prior art in supporting the rejections of claims 1-31 and 41-93 under 35 U.S.C. 103(a). However, the Undersigned respectfully submits that Leano et al. and Chapman can be disqualified as prior art in view of 35 U.S.C. 103(c) or M.P.E.P. 2146 provided that this application was filed on or after November 29, 1999. Specifically, 35 U.S.C. 103(c) provides: "Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

As applied to 35 U.S.C. 103(c), Leano et al. and Chapman each contains subject matter developed by another person (e.g., Leano et al. and Chapman). Leano et al. and Chapman each also "qualifies" as prior art under 35 U.S.C. 102(e) since Leano et al. was filed on June 2, 1999 and Chapman was filed on January 4, 1999, which were both before the Applicants' application filing date of June 29, 1999. Further, as evidenced by the Assignee designations in Leano et al., Chapman, and Applicants' application, there is common ownership (e.g., Cisco Technology, Inc.) of the subject matter disclosed in Leano et al., Chapman, and the claimed invention at the time the invention was made. That is, Applicants' application and Leano et al./Chapman were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s). Because Leano et al. and Chapman each was used by the Examiner in an obviousness rejection under 35 U.S.C. 103(a), the Undersigned would respectfully submit that Leano et al. and Chapman be disqualified as prior art in accordance to M.P.E.P. 706.02(l)(3) and that claims 1-31 and 41-93 are in condition for allowance.

However, the application of 35 USC 103(c) is only proper if this application was filed on or after November 29, 1999. Since this is not the case, Applicants will consider filing a continuing application so that the application may qualify for the benefit of 35 USC 103(c) exclusion of common assignee type prior art. Nevertheless, any submittal that Leano et al. and Chapman be disqualified as prior art in view of 35 U.S.C. 103(c) or M.P.E.P 2146 should not be construed as an admittance on behalf of the Applicants of any obviousness that may be attributed to Leano et al. or Chapman.

SUMMARY

If any fees are due in connection with the filing of this Response, the Commissioner is authorized to deduct such fees from the undersigned's Deposit Account No. 50-0388 (Order No. CISC089).

Respectfully submitted,
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